

Bradley Schrager, Esq.
Nevada State Bar No. 10217
Daniel Bravo, Esq.
Nevada State Bar No. 13078
WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP
3556 E. Russell Road, 2nd Floor
Las Vegas, Nevada 89120-2234
Telephone: (702) 341-5200/Fax: (702) 341-5300
Email: bschrager@wrslawyers.com

Attorney for Defendant Anastasia Popova

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ILIA N. ZAVIALOV, in the right of and for
the benefit of DREAM MARRIAGE GROUP,
INC.,

Case No:

Plaintiff.

District Court Case No.: A-13-690188-C
District Court Dept No.: XXX

VS.

ANASTASIA POPOVA, DOES 1 through
50, Inclusive,

**NOTICE OF REMOVAL OF CIVIL
ACTION**

Defendants.

-and-

DREAM MARRIAGE GROUP, INC.

Nominal Party.

NOTICE OF REMOVAL OF CIVIL ACTION

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEVADA:

Please take notice that, pursuant to 28 U.S.C. §§ 1332(a), 1441 and 1446, Defendant Anastasia Poponya (hereinafter “Defendant”) by and through her undersigned counsel, hereby

1 removes this action from the Eighth Judicial District Court of Clark County, Nevada, to the United
2 States District Court for the District of Nevada. The jurisdictional basis for removal is diversity of
3 citizenship pursuant to 28 U.S.C. § 1332(a). In support of removal, Defendant states as follows:

4 **I. THE REMOVED ACTION**

5 1. On October 15, 2013, Plaintiff Ilia N. Zavialov (hereinafter “Plaintiff”) filed the
6 instant action in the Eighth Judicial District Court of Clark County, Nevada (Case No. A-13-
7 690188-C, the “State Action”). A true and correct copy of the Verified Complaint and Summons
8 of the State Action are attached hereto as **Exhibit A**.

9 2. Plaintiff, derivatively on behalf of Dream Marriage Group, Inc., seeks damages for
10 the causes of action of (1) Conversion, (2) Intentional Breach of Fiduciary Duty, (3) Negligent
11 Breach of Fiduciary Duty, (4) Gross Negligence and Mismanagement, (5) Negligence, and (6)
12 Unjust Enrichment against Defendant.

13 3. The Complaint and Summons were served upon Defendant by process server on
14 October 15, 2013, which is the date on which Defendant first became aware of this action.

15 4. Defendant is informed and believes, according to the Eighth Judicial District Court
16 docket, a true and correct copy is attached hereto as **Exhibit B**, that no other pleadings have
17 occurred in this matter in the Eighth Judicial District Court apart from the filing of the above-
18 referenced pleadings.

19 **II. GROUND FOR REMOVAL**

20 **A. Diversity Jurisdiction Exists in this Action**

21 5. The State Action is removable pursuant to 28 U.S.C. § 1441(a) because the district
22 courts of the United States have original jurisdiction over this action. Specifically, this Court has
23 diversity jurisdiction over the State Action pursuant to 28 U.S.C. § 1332(a) because the State
24 Action is between citizens of different states and the matter in controversy exceeds the statutory
25 sum or value of \$75,000.00, exclusive of interests and costs.

26 6. According to the Verified Complaint, as of the filing of the Verified Complaint and
27 at all times thereafter, Plaintiff is a citizen of the State of Washington. As of the filing of the
28

1 Verified Complaint and at all times thereafter, Defendant is a citizen of the State of California.

2 7. While the Verified Complaint is also brought against Dream Marriage Group, Inc.,
 3 a nominal party, pursuant to 28 U.S.C. § 1446(a), nominal, unknown or fraudulently joined parties
 4 need not join in the petition for removal. *See United Computer Sys., Inc. v. AT & T Corp.*, 298
 5 F.3d 756, 762 (9th Cir. 2002)(holding “the ‘rule of unanimity’ does not apply to ‘nominal,
 6 unknown or fraudulently joined parties’”); *Hewitt v. City of Stanton*, 798 F.2d 1230, 1233 (9th Cir.
 7 1986). Furthermore, the docket does not indicate that this nominal defendant has been served with
 8 the Verified Complaint or that summons has issued to effect service. *See Ex. B.* Alternatively,
 9 consent of an un-served defendant is not required where its absence is explained in the removal
 10 papers. *See Salveson v. Western States Bankcard Ass’n.*, 731 F.2d 1423, 1429 (9th Cir. 1984)
 11 (noting “a party not served need not be joined” in a petition for removal).

12 8. Accordingly, pursuant to 28 U.S.C. § 1332(a), complete diversity jurisdiction exists
 13 between all active parties to this litigation.

14 **B. The Jurisdictional Amount is Satisfied**

15 9. The removing Defendant bears the burden of proving a preponderance of the
 16 evidence that the amount in controversy exceeds \$75,000. *Singer v. State Farm Mut. Auto. Ins.*
 17 *Co.*, 116 F.3d 373, 376 (9th Cir. 1997). If it is “facially apparent” from the complaint that the
 18 plaintiff seeks damages sufficient to create federal jurisdiction, then the case should be remanded
 19 “only if it appears to a legal certainty that the claim is actually for less than the jurisdictional
 20 minimum.” *Davis v. Advanced Care Techs, Inc.*, 2007 U.S. Dist. LEXIS 32348 at *3 (E.D. Cal.
 21 2007) (quoting *Singer*, 116 F.3d at 376).

22 10. Here, it is facially apparent from the nature of Plaintiff’s Verified Complaint that
 23 the amount in controversy exceeds \$75,000.00. The Verified Complaint alleges “Defendant has
 24 diverted approximately \$1,200,00.00, of which \$740,000.00 is liquid cash” that Plaintiff seeks to
 25 recover. *See Ex. A.* Accordingly, 28 U.S.C. § 1332(a) is satisfied.

26 **C. Venue is Proper in this Court**

27 11. Pursuant to 28 U.S.C. § 1441(a), venue on removal is proper in this Court because

28

1 the United States District Court for the District of Nevada embraces the Eighth Judicial District
 2 Court of Clark County, Nevada, where the action was first filed. Defendant, however, reserves the
 3 right to file a motion to transfer this case to another venue pursuant to 28 U.S.C. § 1404(a), and
 4 does not waive her right to do so.

5 **D. Notice of Removal is Timely**

6 12. On October 15, 2013, Plaintiff filed his Verified Complaint against Defendant. The
 7 Complaint and Summons were served to Defendant by process server on October 15, 2013.

8 13. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely because it was
 9 filed within thirty days of Defendant's receipt of the initial pleadings.

10 **E. Consent to Removal is Not Required**

11 14. Plaintiff also brought claims against fictitious defendants Does 1 through 50,
 12 inclusive. *See Ex. A.* Plaintiff has declared these defendants as "unknown" to Plaintiff and
 13 therefore sued under "fictitious names." Under 28 U.S.C. § 1441(a), fictitious names "shall be
 14 disregarded" for purposes of removal. Therefore, consent for removal is not required from the Doe
 15 defendants. *See 28 U.S.C. § 1441(a); see also Hewitt, 798 F.2d at 1233.*

16 15. As stated in Paragraph 7 herein, Dream Marriage Group, Inc. is a nominal
 17 defendant whose citizenship is disregarded as a matter of law for purposes of removal on grounds
 18 of diversity jurisdiction and whose consent for removal is not required. *See 28 U.S.C. § 1441(a);*
 19 *see also Hewitt, 798 F.2d at 1233.*

20 **III. SERVICE OF NOTICE OF REMOVAL**

21 16. Pursuant to 28 U.S.C. § 1446(d), Defendant is filing a notice to the Eighth Judicial
 22 District Court of Clark County, Nevada, of the filing of the Notice of Removal ("Notice of
 23 Filing") contemporaneously with the filing of this Notice of Removal. The Notice of Filing
 24 satisfies the requirements of 28 U.S.C. § 1446(d).

25 **IV. PLEADINGS AND PROCESS**

26 17. As required by 28 U.S.C. § 1446(a), Defendant has attached copies of all state
 27 court process and pleadings to this Notice of Removal. *See Ex. A.*

18. A copy of this Notice of Removal is being served upon Plaintiff contemporaneously. A copy of this Notice of Removal is being filed with the clerk of the Eighth Judicial District Court of Clark County, Nevada.

19. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of Defendant's right to assert any defense or affirmative matters including, but not limited to, the defenses of lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, failure to state a claim or any other procedural or substantive defense available to Defendant.

20. This Notice of Removal is submitted to the United States District Court for the District of Nevada subject to the Federal Rules of Civil Procedure and is signed pursuant to Fed.R.Civ.P. 11.

V. CONCLUSION

WHEREFORE, having met all the requirements for removal under 28 U.S.C. § 1441 and 1446, including all the jurisdictional requirements of 28 U.S.C. § 1332, Defendant gives notice that it has removed the above-captioned case to the United States District Court, District of Nevada.

DATED this 13th day of November, 2013.

**WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP**

By: /s/ Bradley Schrager, Esq.
Bradley Schrager, Esq.
Nevada State Bar No. 10217
Daniel Bravo, Esq.
Nevada State Bar No. 13078
WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLL
3556 E. Russell Road, 2nd Floor
Las Vegas, Nevada 89120-2234

Attorney for Defendant Anastasia Popova

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP, and that on the 13th day of November, 2013, I served a true and correct copy of the foregoing NOTICE OF REMOVAL OF CIVIL ACTION upon all counsel of record by electronically serving the document using the Court's electronic filing system.

By /S/ Christie Rehfeld

Christie Rehfeld, an Employee of
WOLF, RIFKIN, SHAPIRO, SCHULMAN &
RABKIN, LLP